BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOHN OREM Claimant VS. **COMMUNITY LIVING OPPORTUNITIES** Respondent AND **KANSAS EMPLOYERS WORKERS COMPENSATION FUND** Insurance Carrier	)	Docket No. 1,047,460

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the March 8, 2012, Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on July 10, 2012. Jeff K. Cooper, of Topeka, Kansas, appeared for claimant. Darin M. Conklin, of Topeka, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found that claimant had a 16.33 percent functional impairment to the whole body. Further, the ALJ found that claimant was permanently, totally disabled.

The Board has considered the record and adopted the stipulations listed in the Award. The Board notes, and the parties agree, that the stipulation No. 7 listed on page 2 of the Award mistakenly indicates that no temporary total disability compensation was paid. In fact, 97 weeks of temporary total disability compensation were paid at the weekly rate of $274.17 for a total amount of $26,594.49. The Board further notes, and the parties also agree, that stipulation No. 8 listed on page 2 of the Award mistakenly indicates that $26,594.49 was paid for hospital and medical treatment of the claimant. The correct amount of hospital and medical treatment respondent paid on claimant's behalf was $14,058.86.

ISSUES

Respondent argues that claimant is not permanently and totally disabled as a result of his work-related injury. Respondent further argues that claimant instead should be eligible for a work disability as he is no longer employed. Respondent contends that Dr. Timothy Pettingell's task loss opinion is more credible than the task loss opinions of Dr. Pedro Murati and Dr. P. Brent Koprivica and should be adopted by the Board in computing claimant's work disability. Respondent further asserts that claimant's functional impairment should be limited to 10 percent to the whole body as Dr. Pettingell's rating opinion is more credible than those of Drs. Murati and Koprivica.

Claimant argues the Board should affirm the ALJ's finding that he is permanently, totally disabled. In the alternative, claimant asks that the Board find claimant has a 99 percent work disability based on a 100 percent wage loss and a 98 percent task loss as opined by Dr. Koprivica.

The issue for the Board's review is: What is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant began working for respondent on April 1, 2002, as a night teaching counselor. His job was to protect the safety and provide for the comfort of respondent's developmentally disabled clients in a group home setting. At times, his job required him to lift clients and also to assist clients who walked with a gait belt. Claimant is alleging a series of accidents while working at respondent starting in 2007 and continuing through March 24, 2009. He is claiming injuries to his cervical and lumbar spine (neck and low back).

In 2007, a client was holding on to claimant's neck and without notice, the client lifted up both his feet. Claimant claims that incident resulted in arm pain. At the time, he did not associate that pain with a cervical injury. In November 2007, respondent sent claimant to Dr. Fevurly, and Dr. Fevurly released claimant to return to work with no restrictions. Claimant returned to the same job. As he worked, claimant continued to have problems with his neck and back up through March 2009. His neck and back were aggravated most when he changed briefs on bedridden clients and when he lifted clients. Also, when a client was on a gait belt, the client would at times lunge, which would put a sudden strain on claimant's back and neck. On claimant's last day of work, March 24, 2009, he had an incident with a client. Claimant could not remember if he was trying to pick the client up from the floor or if the client was lunging.

Claimant said his neck and back pain continued to get worse through March 24, 2009, as he was performing his regular duties. Claimant reported his injury to respondent and was initially sent to Prompt Care. Later, he was sent to Lawrence Occupational

Health, where he was seen by Dr. Geist. Dr. Geist referred claimant to Dr. Adrian Jackson, who recommended physical therapy and conservative treatment of claimant's neck and back. Dr. Jackson released claimant from treatment on August 6, 2009, with restrictions that included no repetitive bending or lifting and a maximum lifting restriction of 15 pounds.

At the November 10, 2011, regular hearing, claimant said he was having problems with his low back and legs, primarily his right leg. He did not have neck pain but had pain in his arms, which Dr. Jackson had told him was caused by a pinched nerve in his neck. Claimant's back pain was constant; his arm pain came and went. Claimant said because of his condition, he did not do much anymore.

Claimant has suffered from diabetes mellitus for 15 years and is insulin dependent. His diabetes mellitus causes him to have tingling in his feet and fingers about once a week if he has done a lot of driving. His diabetes has affected his eyesight, but that has not limited his activities. He suffers from a heart condition and was in the hospital for 11 days in February 2011 with pneumonia and congestive heart failure. Claimant has had stents placed in his heart on at least two occasions. He suffered from angina, but has not had an angina attack since February 2011. To the best of his knowledge, he is not under any restrictions as a result of his heart condition. His heart condition limits his ability to walk more than anything else because his stamina is limited. Claimant has swelling in his legs, but he takes diuretics and wears compression socks. Claimant also takes medication for high blood pressure.

Claimant weighed 334 pounds at the time of the regular hearing. He applied for Social Security disability in March or April 2009 and receives about $884 a month in disability benefits. He has not returned to work since his employment with respondent ended in March 2009.

Dr. P. Brent Koprivica is board certified in emergency medicine and in occupational medicine. At the request of claimant's attorney, he evaluated claimant on December 18, 2009. He reviewed claimant's medical records concerning his treatment after his work-related accidents. Claimant told Dr. Koprivica of his extensive medical history, including his diabetes and heart conditions. He also told Dr. Koprivica that he had neck and arm pain in 2006, left greater than right.

Claimant told Dr. Koprivica about the incident when a client wrapped his arms around claimant's neck and raised his feet up, another incident in which claimant had to lift up a client, and an incident when a client in a gait belt started to fall and claimant injured his neck and right shoulder in catching the client.

At the time of his evaluation by Dr. Koprivica, claimant was complaining of ongoing neck pain that radiated into both arms. The pain in his arms radiated into the thumbs, index fingers and middle fingers. Claimant also complained of low back pain with bilateral

leg symptoms. Claimant said his sitting tolerance was less than 20 minutes, his standing was limited, and his walking tolerance was less than 1/2 block.

After examining claimant, Dr. Koprivica concluded that there was objective evidence of injury to his cervical spine and his low back. He opined that claimant had suffered an injury to his cervicothoracic region while working at respondent. He specifically noted the incident when a client was hanging from claimant's neck and stated that incident, in particular, and claimant's subsequent work activities resulted in permanent aggravation, acceleration and intensification of claimant's cervical spondylosis with the development of chronic cervical pain and cervical radiculopathy. Further, Dr. Koprivica opined that claimant suffered permanent aggravation, acceleration and intensification of his multi-level lumbar spondylosis with the development of multi-level annular disc bulges and a prominent right-sided disc protrusion at the L5-S1 level with resultant right S1 radiculopathy. Dr. Koprivica testified that after his examination of claimant, he reviewed the results of claimant's electrodiagnostic studies of November 16, 2010, which showed claimant had no evidence of cervical radiculopathy or right or left lumbosacral radiculopathy. He stated that "electrodiagnostic studies are not a 100 percent test. Now I agree when they're abnormal, that certainly would be confirmatory but their absence does not necessarily exclude the possibility of radiculopathy."[1]

Dr. Koprivica recommended claimant avoid surgery due to the multi-level involvement in his cervical and lumbar regions as well as his history of coronary artery disease and insulin-dependent diabetes mellitus. Dr. Koprivica recommended claimant lose weight and undergo a formal water exercise program. He also recommended that claimant's pain medication be monitored and suggested electrodiagnostic studies on both claimant's upper extremities.

Dr. Koprivica testified that he would place claimant in DRE Cervicothoracic Category II for a 5 percent whole person impairment. He would place claimant in DRE Lumbosacral Category III with a 10 percent impairment in regard to claimant's lumbar spine, noting an MRI showed claimant had a disc protrusion with structural evidence of impingement on the nerve root as well as radicular symptoms. These ratings would combine for a 15 percent permanent partial impairment to the whole body.

Dr. Koprivica recommended claimant have ongoing medical care in the hope that additional medical care would assist in claimant's recovery. Dr. Koprivica did not treat claimant, nor did he give claimant any restrictions at the time of his original IME in December 2009. His restrictions were issued about 2 years later in an addendum report without the benefit of having seen claimant again. Dr. Koprivica acknowledged that he would prefer to issue restrictions based on a more contemporaneous examination, especially if the individual had sought medical care during the period after the IME.

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[1] Koprivica Depo. at 39.

On October 24, 2011, Dr. Koprivica provided an addendum to his report of December 2009 regarding recommended restrictions for claimant. Dr. Koprivica believed claimant should limit overall physical demand to sedentary. He should only occasionally lift and carry to a 10-pound resistance maximum. He should avoid repetitive or sustained activities above shoulder level, avoid overhead lifting, avoid frequent or constant bending at the waist, pushing, pulling or twisting, avoid sustained or awkward postures of the lumbar spine, avoid frequent or constant squatting, crawling or kneeling. Dr. Koprivica restricted claimant entirely from climbing. Claimant should have a general guideline of 30-minute intervals of sitting, standing or walking. He should avoid whole body vibration exposure. Dr. Koprivica said the restrictions that concerned claimant's cervical injury were the avoidance of repetitive or sustained activities above shoulder level, avoiding overhead lifting, and avoiding the jarring and operating of heavy equipment. Dr. Koprivica said claimant could have potentially been employable if there were no cervical restrictions.

Dr. Koprivica reviewed a task list prepared by Robert Barnett, Ph.D. Of the 31 tasks on the list, Dr. Koprivica believed that claimant would be unable to perform 30 for a 98 percent task loss. Dr. Koprivica opined that claimant is practically and realistically unemployable. He did not believe claimant could perform work in the open labor market, nor did he believe the restrictions he placed on claimant could be accommodated wherever he might work.

In concluding that claimant is permanently, totally disabled, Dr. Koprivica took into account that claimant had a college level aptitude and that he was 62 years old. Dr. Koprivica said if there is a job position that matches the restrictions placed on claimant, there is nothing else that would preclude him from doing that employment if he had the qualifications.

Dr. Koprivica acknowledged that claimant had degenerative disc disease and cervical spondylosis and that the mere existence of those conditions is not work related. Those conditions will worsen over time regardless of one's work activities. He does not know of any literature that reported that diabetics are at increased risk of progression of degenerative disc disease in the lumbar spine. Dr. Koprivica said it is possible that with respect to claimant's cervical spine, what claimant is experiencing is a natural progression of his cervical spondylosis.

Dr. Pedro Murati is board certified in physical medicine and rehabilitation, electrodiagnosis and independent medical evaluation. At the request of claimant's attorney, he evaluated claimant on June 8, 2011. He reviewed claimant's medical records and took a history of claimant's injury. Claimant told Dr. Murati that he had no preexisting back problems. Dr. Murati noted that in 2007 claimant was diagnosed with degenerative disc disease and spondylosis. He said those conditions were not caused by work activities.

After performing a physical examination, Dr. Murati diagnosed claimant with neck pain with radiculopathy, low back pain with radiculopathy, and right sacroiliac joint dysfunction. He opined that those conditions were causally related to the work-related injury claimant sustained.

Using the AMA *Guides*,[2] Dr. Murati placed claimant in DRE Cervicothoracic Category III for a 15 percent impairment and in DRE Lumbosacral Category III for a 10 percent impairment, which combine for a 24 percent permanent partial impairment to the whole person. Dr. Murati believes that impairment is causally attributable to his work at respondent. Dr. Murati said he placed claimant in Cervicothoracic Category III because he was missing both biceps reflexes, had a depressed pronator bilaterally, and had classic findings of radiculopathy. He placed claimant in Lumbosacral Category III because he had all the classical findings of radiculopathy in his low back.

Dr. Murati also ruled out diabetes as a cause of claimant's muscle weakness and as a cause of claimant's missing reflexes. Dr. Murati reviewed the results of claimant's EMG test performed in November 2010. He testified he disregarded the EMG conclusion that claimant had no cervical or lumbar radiculopathy, stating that the test results were wrong. Dr. Murati did not find that claimant had any atrophy in his legs, but he found atrophy in claimant's arms. Dr. Murati acknowledged that claimant had a negative Spurling's test, which would not be consistent with radiculopathy.

Dr. Murati placed the following restrictions on claimant: No bending, crouching, stooping, climbing ladders, crawling, or working above shoulder height; rarely climb stairs and squat; occasionally sit, stand, walk and kneel. No repetitive lifting, carrying, pushing and pulling and none above 10 pounds. Claimant could lift, carry push and pull 10 pounds rarely, 5 pounds occasionally and 2.5 pounds frequently. Claimant is to do no work more than 24 inches from the body, avoid awkward positions of the neck, and alternate sitting, standing and walking. Claimant is to be allowed 30 minutes of rest after every hour of work. That restriction is causally related to claimant's neck and back problems. All restrictions are causally related to claimant's work injury at respondent.

Dr. Murati reviewed Dr. Barnett's task list. He did not believe claimant could perform any of the tasks on the list and that he has a 100 percent task loss. Dr. Murati opined that claimant is essentially and realistically unemployable due to his physical condition.

Dr. Timothy Pettingell is board certified in physical medicine and rehabilitation, electrodiagnostic medicine and independent medical evaluation. He first began treating claimant on October 25, 2010. At the time of Dr. Pettingell's initial evaluation of claimant

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[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

in October 2010, claimant stated that his neck pain was no longer present but that he was experiencing low back pain. The last time he saw claimant was July 12, 2011.

Based on Dr. Pettingell's examinations of claimant during the course of his treatment, he diagnosed claimant with chronic neck and low back pain with multilevel lumbar spondylosis, arthritis, and diabetes mellitus with a question of diabetic peripheral neuropathy. Claimant complained of a poorly localized pain of the upper extremities, which Dr. Pettingell did not classify as radicular. Thereafter, Dr. Pettingell ordered electrodiagnostic testing because he suspected peripheral neuropathy related to diabetes. The EMG study was conducted on November 16, 2010. The test showed no objective evidence of right or left cervical radiculopathy or lumbosacral radiculopathy. Dr. Pettingell opined that claimant had severe peripheral neuropathy, which can affect the lower extremities with regard to pain, tingling, numbness, and strength. For the upper extremities, it can result in poorly localized numbness, tingling of the hands and forearm, and grip weakness. Dr. Pettingell did not note that claimant had any atrophy, but his examination for that was limited by claimant's peripheral edema and large body habitus.

Dr. Pettingell found claimant to be at maximum medical improvement on April 4, 2011. On that date, claimant reported that his low back pain was improved and his neck was rarely painful. Dr. Pettingell saw claimant again on July 12, 2011, at which time claimant reported pain in his right lateral proximal arm, which was a new complaint. Dr. Pettingell suspected the arm pain was related to claimant's cervical spine and wanted additional testing, such as an MRI, but no MRI was ever conducted. When Dr. Pettingell originally saw claimant in October 2010, claimant's symptoms in his upper extremities were vague and were poorly localized. In July 2011, claimant had more localized symptoms.

Using the AMA *Guides*, Dr. Pettingell rated claimant as having a 5 percent permanent partial impairment of the whole person to his cervical spine, placing claimant in DRE Cervicothoracic Category II. He did not utilize a Category III as he found no objective evidence of radiculopathy or nerve root injury. Dr. Pettingell said he was specifically giving the impairment rating for claimant's work-related injury and not claimant's other medical problems. As to claimant's lumbar spine, Dr. Pettingell found claimant to be in Lumbosacral Category II for a 5 percent whole person permanent partial impairment. He found objective pathology of a lumbar spine condition but no objective evidence of radiculopathy.

Dr. Pettingell recommended restrictions for claimant based on his cervical and lumbar conditions. He permanently restricted claimant to 30 pounds lifting, pushing and pulling. He recommended claimant do no reaching overhead, no working overhead, and no climbing. He would not restrict claimant from sitting, standing or walking. He did not believe claimant should have any postural restrictions.

Dr. Pettingell reviewed Steve Benjamin's task list. Of the 52 non-duplicative tasks, he opined claimant was unable to perform 14 for a 27 percent task loss.[3] Dr. Pettingell stated that in regard to claimant's injury of March 2009, claimant is capable of gainful employment within the restrictions he previously stated. Dr. Pettingell also reviewed Dr. Barnett's task list. Of the 31 tasks identified by Dr. Barnett, claimant is unable to perform 18 for a task loss of 58 percent.

Taking into consideration all of claimant's medical problems, Dr. Pettingell would tend to agree that claimant was essentially and realistically unemployable, but he would like claimant to have a functional capacity evaluation before rendering an opinion as to whether he was realistically unemployable. But he believed that claimant could perform sedentary activities. He said claimant's co-morbidities would limit his employment, but claimant's back and neck injury would add additional limitations on his ability to work that are not otherwise in place from the co-morbidities. From this particular injury only, it is Dr. Pettingell's opinion that claimant is still able to engage in gainful employment.

Robert Barnett, Ph.D., is a licensed psychologist. He is also licensed to practice in the field of vocational rehabilitation. At the request of claimant's attorney, he interviewed claimant by telephone on July 15, 2011, to prepare a wage and task loss assessment. At the time of the interview, claimant was 64 years old. He had graduated from high school and had completed three semesters of college. Claimant was not employed at the time of the interview, and he was on Social Security disability. Dr. Barnett identified a total of 31 non-duplicative tasks that claimant had performed in the 15-year period before his accident.

Dr. Barnett testified that since Dr. Koprivica concluded claimant could not access the open labor market, he would presume that was true. He also added that claimant is on Social Security disability, and Social Security typically does not award those benefits if someone is employable.

Steve Benjamin, a vocational rehabilitation consultant, interviewed claimant by telephone on October 7, 2011, at the request of respondent's attorney, after which he compiled a list of 52 non-duplicated tasks that claimant had performed in the 15-year period before his accident.

Mr. Benjamin testified that within the restrictions and opinions of Drs. Murati and Koprivica, claimant would not be able to re-enter the open labor market. Mr. Benjamin conducted a labor market review with respect to his evaluation of claimant. He opined that based on the work restrictions of Drs. Pettingell and Geist, claimant should be able to re-enter the open labor market and earn approximately $367.68 based on a 40-hour work week. Mr. Benjamin opined that claimant could perform the following jobs based on the restrictions

[3] Dr. Pettingell's testimony was that Mr. Benjamin's task list had 53 non-duplicative tasks, but a count reveals there were only 52.

of Drs. Pettingell and Geist[4]: customer service representative, hotel clerk, order clerk, sales clerk and telephone solicitor.

PRINCIPLES OF LAW

K.S.A. 2009 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2009 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510e(a) states in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

K.S.A. 44-510c(a)(2) defines permanent total disability as follows:

> Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary,

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[4] Although Dr. Geist did not testify in this case and his records were not made a part of the record, Mr. Benjamin's report indicates on March 30, 2009, Dr. Geist placed permanent restrictions on claimant limiting his lifting to no greater than 20 pounds, and restricting bending, squatting and twisting to 2 to 4 hours.

> shall constitute a permanent total disability. Substantially total paralysis or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

While the injury suffered by the claimant was not an injury that raised a statutory presumption of permanent total disability under K.S.A. 44-510c(a)(2), the statute provides that in all other cases permanent total disability shall be determined in accordance with the facts. The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.[5]

In *Wardlow*[6], the claimant, an ex-truck driver, was physically impaired and lacked transferrable job skills making him essentially unemployable as he was capable of performing only part-time sedentary work.

The court in *Wardlow* looked at all the circumstances surrounding his condition including the serious and permanent nature of the injuries, the extremely limited physical chores he could perform, his lack of training, his being in constant pain and the necessity of constantly changing body positions as being pertinent to the decision whether the claimant was permanently totally disabled.

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[7] The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.[8] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[9]

ANALYSIS

The Board finds claimant is permanently and totally disabled for the reasons stated by the ALJ in the Award. Claimant had preexisting injuries and conditions, some of which bear no connection to his work injuries. There is no evidence, however, that claimant had work restrictions placed on him by any physician before the series of work-related accidents

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[5] *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

[6] *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

[7] *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

[8] *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

[9] *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).

and injuries that are the subject of this claim. In addition, when determining whether an injured worker is permanently and totally disabled from engaging in gainful employment in the open labor market, consideration must be given to multiple factors, including the age, education, training, job experience and overall physical condition of the individual. The Board is persuaded by the opinions of Drs. Koprivica and Murati, both of whom expressed opinions that claimant was realistically unemployable. Based upon the restrictions given by either of these two physicians, both vocational rehabilitation experts agreed that claimant probably could not access the open labor market. Even Dr. Pettingell acknowledged claimant was most likely unemployable when considering all of his medical conditions, although he conditioned this statement by noting he would first want to obtain an FCE. For the most part, these conditions preexisted this March 24, 2009, accident.[10] Nevertheless, even looking at only the restrictions recommended by Drs. Koprivica and Murati for this accident without regard to claimant's other conditions, claimant is realistically unemployable.

CONCLUSION

Claimant is entitled to an award of compensation based upon a permanent total disability.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated March 8, 2012, is modified to correct the amount of temporary total disability compensation paid to claimant but is otherwise affirmed.

Claimant is entitled to 30.14 weeks temporary total disability compensation at the rate of $300.74 per week or $9,064.30, followed by 66.86 weeks temporary total disability compensation at the rate of $298.26 per week or $29,005.96, followed by permanent total disability compensation at the rate of $298.26 per week not to exceed $125,000 for a permanent total general body disability.

As of August 2, 2012, there would be due and owing to the claimant 30.14 weeks temporary total disability compensation at the rate of $300.74 per week or $9,064.30, plus 66.86 weeks temporary total disability compensation at the rate of $298.26 per week or $29,005.96, plus 78.29 weeks of permanent total disability compensation at the rate of $298.26 per week in the sum of $23,350.78 for a total due and owing of $52,356.74, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of $72,643.26 shall be paid at $298.26 per week until fully paid or until further order of the Director.

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[10] March 24, 2009, was the ending date of the series of accidents and the parties stipulated to this date as the date of accident for the series.

IT IS SO ORDERED.

Dated this _____ day of August, 2012.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
jeff@jkcooperlaw.com

Darin M. Conklin, Attorney for Respondent and its Insurance Carrier
dconklin@aldersonlaw.com

Brad E. Avery, Administrative Law Judge